
(2009) 05 PAT CK 0031
In the Patna High Court
Case No : CWJC No. 2057 of 2009

Sangita Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Citation : (2009) 4 PLJR 27

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—Heard counsel for the petitioner and counsel for the State. This Court in fact in its earlier order dated 11.2.2009 had already expressed its tentative opinion on perusal of the materials available on record that prima facie the reasons for termination of service of the petitioner were bad and unsustainable. In this context, this Court had held as follows:-

"In the opinion of this Court there is hardly any scope for cancellation of appointment of the petitioner, inasmuch as, the name of the petitioner was placed at serial No. 1 of the panel and therefore, only ground for canceling her appointment as is evident from the order of the Collector that on the date of her empanelment she had not completed 18 years is neither here nor there. The Collector of the District completely failed to take into account that Clause 5(gha) only contemplates reckoning of the age of a candidate for the purpose of maximum age to be the 1st of January of the calendar year. There is no difficulty that the date of birth of the petitioner being 25.1.1987 she was above 18 years of age on the date of her appointment on 28.5.2005 or even on the date of her empanelment some time in the month of April, 2005. In that view of the matter, it cannot be said that either the petitioner had made any misrepresentation with regard to her age or there was any violation of any guideline of the Government in the appointment of the petitioner.

That being so, prima facie there does not seem to be any infirmity in appointment of the petitioner."

2. The respondents ultimately have filed a counter affidavit wherein also the main ground as indicated is with regard to the age of the petitioner on the date of her appointment. Of course, a plea has been taken that the petitioner was not given further extension on completion of a period of 11 months but then such statement loses its significance because the respondents have not been able to controvert the specific certificate given by the head of the institution i.e. the Headmaster of the School who had taken work from the petitioner for a period of three years. As a matter of fact, the said certificate of the Headmaster of the School dated 10.12.2008 has been only described as "irrelevant" in paragraph No. 14 of The counter affidavit.

3. Thus, the only question which would remain for determination is as to what would be the age for appointment of Shiksha Mitra? The provision made to this effect by the State Government in the Resolution dated 11.8.2004 reads as follows:-

4. This expression, therefore, would only talks of the calendar year but again would only prescribe the maximum age and not the minimum age.

5. Counsel for the State is correct in suggesting at this stage that one must be major on the date of appointment i.e. 18 years and above but then the qualifying limit for the persons as with regard to the minimum age cannot be 1st of January because the maximum age is referable to the calendar year in which appointment has to be made. Admittedly, in this case the shortage is only of 24 days and if it is taken from the date of advertisement, the petitioner had already completed 18 years of age.

6. That being so, the solitary reason for terminating the service of the petitioner seems to be absolutely illegal and therefore, the order of the Collector of the district as contained in Annexure-1, so far it relates to the petitioner, is hereby quashed and the respondents are directed to reinstate the petitioner back in service forthwith with full back wages for the period she was deprived from working on her post. With the aforementioned observations and directions, this writ application is allowed.